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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,183	02/08/2001	Eric Ellington	OAA-145-A	6456

21828 7590 04/04/2003

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT PAPER NUMBER

3618

DATE MAILED: 04/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/779,183**

Applicant(s)  
**ELLINGTON**

Examiner  
**Bryan Fischmann**

Art Unit  
**3618**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 11, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Feb 8, 2001 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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*Acknowledgments*

1. The Amendment (paper 12) filed 2-11-2003 has been entered.

*Claim Objections*

2. Claims 6 and 17 are objected to because of the following:

To be consistent with terminology used in claim 1, the term "connecting member" recited in claim 6 should instead be "connecting assembly".

Note that claim 6 is dependant upon claim 1.

See also claim 17 for a similar objection.

*Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6, 7, 9-11, 13 and 15-18 is rejected under 35 U.S.C. 102(b) as being anticipated by Dodge, US Patent 5,580,077.

Dodge teaches a snowboard for sliding over snow, comprising:

an elongated slide board (10) having a slide surface on a lower surface thereof (Figure 2);

and

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an elongated step board (34) defining a deck on an upper surface thereof (Figure 2) and attached to an upper surface of the slide board via a connecting assembly (Figure 5), made of substantially non-compressible material and relatively rigid material (note that the cross-hatching of 54 indicates this part is made of metal - see Section 608 of the MPEP); and

the connecting assembly retains the slide board and step board in a fixed, substantially parallel and spaced relationship in the immediate vicinity of the connecting member during use of the snowboard (see comments below).

Regarding the claim 1 recitations "the connecting assembly retaining the slide board and step board in a fixed, substantially parallel and spaced relationship in the immediate vicinity of the connecting assembly during use of the snowboard", and similar recitations in claims 9 and 18, note that reference number 40 passes through spacer 54. Reference number 40 is a screw that is affixed to the step board of Dodge and is also threaded into the slide board of Dodge. Due to this, in order for the step board of Dodge to "pivot" about the slide board, presumably about the base of inverted mushroom shaped spacer 54, the screw 40 would also have to "rotate" about an axis perpendicular to the plane of the paper illustrating Figure 5 of Dodge, where the spacer 54 meets washer 44. This is not possible since the screw 44 is securely threaded into the slide board of Dodge, as also shown on Figure 5.

Further note that the specification of Dodge is replete with errors and the Applicant should refer to the replacement specification at the rear of the patent. Although lines 54-46 and 63-65 of column 1 and lines 35-39 of column 2 of the replacement specification discuss bending

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of the snowboard, it is best understood that this bending occurs between the connecting assemblies, as opposed to the "vicinity" of the connecting assemblies. Further note that line 37 and 38 of column 4 of the replacement specification recites "...slight....convex bending of the snowboard...". Note that "slight bending" is not considered inconsistent with Applicant's recitation of "substantially parallel and fixed relationship" in claim 1 and similar recitations in claims 9 and 18.

Regarding claims 2 and 13, see Figure 1 of Dodge, particularly noting that the step board is not as long as the slide board.

Regarding claim 6, see the claim objection portion of this Office Action for claim 6.

Regarding claims 7, 10 and 11, note the cross-hatching for reference numbers 44 and 54 on Figure 5 of Dodge corresponds to metal. See Section 608 of the MPEP, where cross-hatching for Patent Applications and Patents is defined. Regarding the recitation of "plurality of connecting members" in claim 7, note that Figure 1 of Dodge shows that there are four connecting members (40, 44 and 54). Note also that the "connecting member" recited in claim 10 also includes these reference numbers.

Regarding claim 15, since it has already been established that reference numbers 44 and 54, which maintain the step and slide boards in spaced relationship are made of metal, since metal does not appreciably compress under low loads, the connecting member will be maintained in a "substantially fixed height" during use of the snowboard.

Regarding claim 16, see Figures 1 and 5.

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Regarding claim 17, see the "comments" regarding similar recitations above in claims 1 and 18. See also the claim objection portion of this Office Action regarding the term "pivot".

5. Claims 1-3, 6, 7, 9-11 and 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Andrew, et al, US Patent 4,320,905.

Andrew teaches a snowboard (see comments below) for sliding over snow, comprising:

an elongated slide board (12 - bottom portion) having a slide surface on a lower surface thereof; and

an elongated step board (19a, 20a and 21) defining a deck on an upper surface thereof and attached to an upper surface of the slide board via a connecting assembly (12 - side and front and rear vertical, or substantially vertical portions), made of substantially non-compressible material and relatively rigid material (lines 1-9 of column 4); and

the connecting assembly retains the slide board and step board in a fixed, substantially parallel and spaced relationship in the immediate vicinity of the connecting member during use of the snowboard.

Regarding the recitation of the "step board is appreciably greater in length and width than the slide board" in claim 3, and similar recitations in claims 14 and 19, see Figures 1 and 2. Also note that Webster's Collegiate Dictionary, 10th Edition, defines "appreciably" as "capable of being perceived or measured".

Regarding the recitation of "snowboard" in the preamble of claims 1, 9, 18 and 19, note that Webster's Collegiate Dictionary, 10th Edition, defines "snowboard" as: "a board like a wide

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ski ridden in a surfing position...". Note that this definition is consistent with the vehicle of Andrew. Also, Section 2111.02 of the MPEP recites "Any terminology in the preamble that limits the structure of the claim limitation must be treated as a claim limitation....If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states...the purpose or intended use of the invention...then the preamble is not considered a limitation...". Since the above preamble recitation only recites intended use and does not contain any structural limitations, other than "snowboard", which is a "wide ski", any device that meets the limitations of the body of claims 1, 9, 18 and 19 and has the general shape of a wide ski will be understood to also meet the preamble limitations.

Regarding claims 7 and 11, see lines 1-9 of column 4. This also applies to the recitation of "relatively rigid material" in claims 9 and 10.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge, US Patent 5,580,077, in view of Tinkler, US Patent 5,544,919.

The snowboard of Dodge fails to teach an engagement portion in the nose part.

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However, Tinkler teaches an engagement portion (Figure 1) in the nose of a sportsboard. Although Tinkler illustrates the engagement portion on a skateboard, Tinkler recites on lines 20 and 21 of column 5 "...these concepts are equally applicable with other sportsboards, such as snowboards...". An engagement portion on the nose of a snowboard is advantageous in that it allows a user's foot to remain engaged with the board, while also allowing the user's foot to be located at a part of the board where there is large "leverage" on the board, which facilitates accomplishing stunts and maneuvering.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an engagement portion on the nose portion of the snowboard of Dodge, as taught by Tinkler.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge, US Patent 5,580,077, in view of Laughlin, et al, US Patent 5,915,721.

The snowboard of Dodge fails to teach a binding.

However, snowboard bindings are well known in the art. Laughlin provides a teaching of a snowboard binding. Bindings allow the boots of a snowboarder to be secured to the snowboard, so that the snowboard and the snowboarder do not become separated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a binding on the stepboard of the snowboard of Dodge, as taught by Laughlin.



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9. Claims 8 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge, US Patent 5,580,077.

Dodge does not explicitly teach the “connecting members” recited in claims 8 and 12 are “tubular” in shape.

However, the “connecting members” have already been defined in the “102 portion” of this Office Action to comprise reference numbers 40, 44 and 54. Note that screw 40 is tubular in shape.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the connecting member of Dodge is tubular in shape.

***Response to Applicant's Remarks (paper 10) and Examiner's Comments***

10. The amendment (paper 10) resolved the claim objections and 35 USC 112 2nd rejections made on the last Office Action (paper 11).

11. Applicant's arguments with respect to the 102 rejections made on the last Office Action of claims being anticipated by Dodge have been considered, but are for the most part moot, due to the amendments to the claims.

However, one point that the Examiner would like to address regarding the Dodge reference, is a recitation by Applicant on page 3 of paper 10 of “...Dodge's connecting mechanism in...Fig. 5...permits and facilitates pivoting movement of the boot mounting plate 28 relative to the guiding slide 10...”.

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The Examiner first would like to again note that the specification of Dodge is replete with errors and the reader must refer to the substitute specification at the rear of the patent to make much sense of what is going on. It was noted that the Applicant compared the Dodge reference to a drawing made by a chimpanzee on page 5 of paper 10. After reviewing the regular portion of the Dodge reference, the Examiner is sympathetic toward this comment. After reviewing the substitute "corrected" specification, while the Examiner agrees that Dodge does allow some relative movement between the slide and step boards, as already noted in this Office Action, the Examiner believes this mainly occurs between the front and rear connecting assemblies of Dodge, as opposed to in the vicinity of the connecting assemblies, as recited by Applicant in the claims. Also, in response to Applicant's comments on page 4 and 5 of paper 10 relative to the curved surface of reference number 54, regardless of the curved surface at the base of reference number 54 of Figure 5, it is still unclear how the interconnection of other parts with reference number 54 would allow reference number 54 to "pivot". Also note that the use of the words "substantially parallel" in the claims, allows for some relative movement between the boards, while still meeting this claim limitation.

12. The Examiner would also like to thank the Applicant for the courtesy extended by the Applicant in preparing an Examiner's Amendment to make the claims allowable. Unfortunately, after review by more senior members of the Patent Office, it became apparent that the Examiner had been negligent in the search performed for prior art related to this Instant Application, as the form 892 included with this Office Action sets forth several particularly pertinent prior art

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references that were previously overlooked by the Examiner. The Examiner regrets the added frustration, expense and delay that this has caused the Applicant. Also note that this Examiner's Amendment was not entered, so that any corrections or changes made by this Examiner's Amendment to the claims must be again made by Applicant by Amendment, if he still feels these changes/corrections are appropriate.

13. Due to the new grounds of rejection of previously allowed claim 19, this action is made non-final.

#### *Conclusion*

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- A) Roblee - teaches sled with upper and lower decks
- B) Nelson - teaches wide ski with seat
- C) Thomas - teaches wide ski with seat
- D) Price - teaches wide ski with seat
- E) Davis - teaches wide ski with seat
- F) Bemis, et al - teaches wide ski with seat
- G) Johnston - teaches wide ski with seat
- H) Johnson - teaches wide ski with seat
- I) Milovich, et al - teaches snow surfboard with more than one deck

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- J) Hunt - teaches wide ski with seat
- K) Joy - teaches wide ski with seat
- M) Merrill - teaches wide ski with seat
- N) Kuchler - teaches wide ski with seat
- O) Wyssen - teaches upper and lower surfaces on a ski (Figure 6)
- P) Oldendorph - teaches wide ski with seat
- Q) Farcot, et al - teaches gliding board having upper and lower surfaces


15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 7:30 to 4:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

BF

03/29/03

  
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